

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

- - -

UNITED STATES OF AMERICA,	.	Case No. 1:09-cr-149
	.	
Plaintiff,	.	Continued Hearing (Day 2)
	.	Arraignment and Plea
- v -	.	
	.	Tuesday, November 10, 2009
ARTIC GLACIER INTERNATIONAL	.	10:00 AM
INC.,	.	
	.	
Defendant.	.	Cincinnati, Ohio
.	

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE HERMAN J. WEBER, SENIOR JUDGE

For the Plaintiff: KEVIN C. CULUM, ESQ.
DONALD M. LYON, ESQ.
United States Department of Justice
Antitrust Division
Carl B. Stokes U.S. Court House
801 West Superior Avenue, 14th Floor
Cleveland, Ohio 44113-1857

For the Defendant: JOHN M. MAJORAS, ESQ.
Jones Day
325 John H. McConnell Boulevard
Suite 600
Columbus, Ohio 43215-2673

For the Petitioners: DAVID F. AXELROD, ESQ.
Axelrod LLC
250 Civic Center Drive, Suite 500
Columbus, Ohio 43215

Also present: Hugh A. Adams, Secretary, Arctic
Glacier Inc.
Laura S. Jensen, Probation Officer

Law Clerk: Amy Peters Thomas, Esq.

Courtroom Deputy: Darlene Maury

Court Reporter: Luke T. Lavin, RDR, CRR

*Proceedings recorded in stenotype;
transcript prepared by computer.*

P R O C E E D I N G S

(In open court at 10:00 AM.)

THE COURT: Proceed, Ms. Maury.

COURTROOM DEPUTY: Judge, on the docket this morning is Criminal Action 09-149, United States of America versus Arctic Glacier International. Appearing on behalf of the government is Kevin Culum and Don Lyons. Appearing on behalf of the defense is John Majoras, and David Axelrod is appearing for the victims group.

THE COURT: Mr. Axelrod, you're welcome to use the smaller table over here.

MR. AXELROD: Thank you very much, Your Honor. I will.

THE COURT: If I'd have known you were coming, I might have baked a cake.

MR. AXELROD: And I would have been grateful for it, Your Honor.

THE COURT: Well, gentlemen, ladies, you actually see I really am a federal judge, and this is the first time this courtroom has been used since May of 2008. So it is a momentous occasion, from my point of view, and I hope you find the environment comfortable.

I realize that this is a hearing of a matter that began on October the 27th of this year and which I recessed, so this is simply a continuation of that proceedings; however, since this

1 was a momentous occasion from the point of view of this room, I
2 asked the courtroom deputy to open court formally. I don't
3 mean to in any way undo what we did at our last meeting.

4 At our last meeting I accepted the waiver of the
5 indictment, and I specifically held that, on page 57 of the
6 transcript, "The Court will accept the waiver and order the
7 Information filed." And then I began, "It has become the
8 charging document in this case and, due to commitments that the
9 Judge has at this time other than this case, the matter will be
10 recessed until November" -- I said the 12th, but I actually
11 misspoke. It's the 10th -- "at 10:00 o'clock," which is the
12 time that we're meeting now.

13 The first issue that I wish to discuss, of course, is the
14 fact that on that date we filed, and I accepted, the Atlantic
15 Glacier International Inc. written consent of directors, and it
16 became docket number 19 in our case file.

17 At this time, Mr. Adams, has there been any change in the
18 desire of the board of directors in this matter?

19 MR. ADAMS: Your Honor, the document is accurate and
20 current.

21 THE COURT: Thank you.

22 The Court then will proceed with the arraignment at this
23 time. Mr. Adams, how does the corporation plead?

24 MR. ADAMS: The plea is guilty, Your Honor.

25 THE COURT: All right. Please be seated. This is a

1 long proceeding. It's important that you and I understand, Mr.
2 Adams, what's going on here.

3 MR. ADAMS: Thank you, Your Honor.

4 THE COURT: And if there's any questions at all in
5 your mind as we go through this proceedings, please ask them.
6 Ask them directly of me, and if you're concerned about asking a
7 question directly of me, why, ask Mr. Majoras and he'll be more
8 than happy to present the question to me. But this is for my
9 benefit and your benefit, and that's why we're concerned. I
10 know the lawyers are important, but this my responsibility.

11 Before I can accept your plea of guilty, I must determine
12 that it is made voluntarily, with an understanding of the
13 nature of the charge and the consequences of the plea. By
14 offering to plead guilty, the corporation gives up certain of
15 the constitutional rights, and this must be an intentional
16 giving up of rights and privileges that they now have. Please
17 understand that I need not accept your plea of guilty unless
18 satisfied of your guilt and that you fully and the corporation
19 fully understands its rights.

20 In order to make this determination, I must ask certain
21 questions. Before I do, it's necessary that you obligate
22 yourself to tell the truth. Once having been sworn, your
23 answers to my questions will be subject to the penalties of
24 perjury, of making a false statement, possibly obstruction of
25 justice, possibly contempt of court.

1 Are you willing to accept the obligation to tell the truth?

2 MR. ADAMS: I am, Your Honor.

3 THE COURT: My first question then is: Have all the
4 answers you've given me on October the 27th and the discussions
5 that we had --

6 COURTROOM DEPUTY: Judge.

7 THE COURT: -- have they all been the truth?

8 MR. ADAMS: Yes, sir, they are all truthful.

9 COURTROOM DEPUTY: Judge, would you like me to swear
10 him in?

11 THE COURT: I guess maybe I should.

12 I guess I should swear you. Since you're a lawyer, you're
13 already sworn, so I didn't -- I jumped the gun.

14 Go ahead, Ms. Maury.

15 COURTROOM DEPUTY: Please stand and raise your right
16 hand.

17 (Hugh A. Adams was duly sworn by the courtroom deputy.)

18 COURTROOM DEPUTY: Thank you. Be seated.

19 THE COURT: Now I repeat my questions.

20 Have all the answers you've given over the course of our
21 relationship been the truth?

22 MR. ADAMS: Yes, they are the truth.

23 THE COURT: I know that you are a practicing lawyer.
24 Is that correct?

25 MR. ADAMS: That's correct.

1 THE COURT: And so your education, if you'll just
2 briefly lay it out for me, I'd appreciate it.

3 MR. ADAMS: I took my law school in Canada, precisely,
4 in Winnnipeg, Manitoba. I was called to the Bar in 1978 and
5 since that time have conducted a practice that commenced doing
6 primarily civil litigation, has now changed and I now do
7 predominantly corporate securities and refinancing work.

8 THE COURT: And would you explain to me what your
9 relationship to the defendant in this case is.

10 MR. ADAMS: I am the corporate secretary, and I'm also
11 the Canadian general counsel for the company.

12 THE COURT: Have you taken any narcotic drugs,
13 medicine or pills or drunk any alcoholic beverages in the past
14 24 hours?

15 MR. ADAMS: I did have a glass of wine with dinner
16 last night.

17 THE COURT: Mr. Majoras, do you have any doubt as to
18 the competency of this defendant to proceed to plead in this
19 matter on behalf of the corporation?

20 MR. MAJORAS: No, sir.

21 THE COURT: Now, we read the Information together on
22 the 27th of October. However, in view of the time that has
23 elapsed, I'm going to ask Mr. Culum to reiterate the
24 Information for the record, please.

25 MR. CULUM: Thank you, Your Honor.

1 The caption: *United States of America v. Arctic Glacier*
2 *International Inc.*, Violation, 15 U.S.C. Section 1.

3 Title: Information. Conspiracy To Restrain Trade, 15
4 U.S.C. Section 1.

5 The United States of America, acting through its attorneys,
6 charges:

7 1. Arctic Glacier International Inc. is hereby made a
8 defendant on the charge stated below.

9 Caption: Description Of The Offense.

10 Paragraph 2. Beginning January 1st, 2001, and continuing
11 until at least July 17th, 2007, the exact dates being unknown
12 to the United States, the defendant and co-conspirators entered
13 into and engaged in a conspiracy to suppress and eliminate
14 competition by allocating packaged-ice customers in
15 southeastern Michigan and the Detroit, Michigan, metropolitan
16 area. The charged conspiracy unreasonably restrained
17 interstate trade and commerce, in violation of Section 1 of the
18 Sherman Act, 15 U.S.C. Section 1.

19 The charged conspiracy consisted --

20 Paragraph 3. Excuse me, Your Honor.

21 The charged conspiracy consisted of a continuing agreement,
22 understanding, and concert of action among the defendant and
23 co-conspirators, the substantial terms of which were to
24 allocate packaged-ice customers in southeastern Michigan and
25 the Detroit, Michigan, metropolitan area.

1 Caption: II. Means And Methods Of The Conspiracy.

2 Paragraph 4. For the purposes of forming and carrying out
3 the charged conspiracy, the defendant and co-conspirators did
4 the following things, among other things:

5 (a) participated in meetings and conversations to discuss
6 packaged-ice customers in southeastern Michigan and the
7 Detroit, Michigan, metropolitan area;

8 (b) agreed during those meetings and conversations to
9 allocate packaged-ice customers in southeastern Michigan and
10 the Detroit, Michigan, metropolitan area;

11 (c) exchanged information during those meetings and
12 conversations for the purpose of monitoring and enforcing
13 adherence to the agreements to allocate customers in
14 southeastern Michigan and the Detroit, Michigan, metropolitan
15 area; and

16 (d) refrained from competing for packaged-ice customers
17 that were so allocated.

18 Caption: III. Defendant And Co-Conspirators.

19 Paragraph 5. Arctic Glacier International Inc., the
20 defendant, is a corporation organized and existing under the
21 laws of the state of Delaware and does business in multiple
22 states, with its principal place of business in St. Paul,
23 Minnesota. During the relevant period, the defendant acquired
24 various packaged-ice manufacturers doing business in Michigan.

25 Paragraph 6. Various individuals and corporations not made

1 defendants in this Information participated as co-conspirators
2 in the events charged and performed acts and made statements in
3 furtherance of it.

4 Paragraph 7. Whenever this Information refers to any act,
5 deed, or transaction of any corporation, it means that the
6 corporation engaged in the act, deed, or transaction by or
7 through its officers, employees, agents or other
8 representatives while they were actively engaged in the
9 management, direction, control, or transactions of its business
10 or affairs.

11 Caption: IV. Trade And Commerce.

12 Paragraph 8. During the period covered by this
13 Information, the defendant and co-conspirators: manufactured
14 packaged ice; (2) distributed packaged ice to retailers in
15 southeastern Michigan and the Detroit, Michigan, metropolitan
16 area; and (3) caused packaged ice to be purchased from, sold
17 to, or distributed from or to, individuals and companies
18 located inside and outside of southeastern Michigan and the
19 Detroit, Michigan, metropolitan area.

20 Paragraph 9. During the period covered by this
21 Information, substantial quantities of packaged ice
22 manufactured and sold by the defendant was shipped across state
23 lines in a continuous and uninterrupted flow of interstate
24 trade and commerce.

25 Paragraph 10. The business activities of the defendant and

1 co-conspirators that are the subject of this Information were
2 within the flow of and substantially affected interstate trade
3 and commerce.

4 Caption: Roman V. Venue.

5 Paragraph 11. The conspiracy charged in this Information
6 was formed and carried out within the Southern District of
7 Ohio, Western Division. At least one of the conspiratorial
8 meetings or discussions described above took place in
9 Cincinnati, Ohio, which is located within the Southern District
10 of Ohio. Acts in furtherance of this conspiracy were carried
11 out within the five years preceding the filing of this
12 Information, all in violation of Title 15, United States Code,
13 Section 1.

14 The Information is signed by Christine Varney, Scott
15 Hammond, Scott Watson, and myself and Marc Siegel.

16 THE COURT: Do you have any questions about this
17 information, Mr. Adams?

18 MR. ADAMS: No questions, Your Honor.

19 THE COURT: Do you understand the nature and meaning
20 of this charge?

21 MR. ADAMS: Yes, Your Honor.

22 THE COURT: Have you told your lawyer everything you
23 know about this case?

24 MR. ADAMS: I'm sorry. I didn't quite hear the
25 question.

1 THE COURT: Have you told your lawyer everything you
2 know about this case?

3 MR. ADAMS: Yes, I have, Your Honor.

4 THE COURT: Do you believe your lawyer is fully
5 informed about the facts and circumstances on which this charge
6 is based?

7 MR. ADAMS: Yes, Your Honor.

8 THE COURT: Has your lawyer fully informed counsel and
9 advised you on the nature and meaning of this charge?

10 MR. ADAMS: Yes, Your Honor.

11 THE COURT: Now, before the corporation can be found
12 guilty of this charge, the United States must prove beyond a
13 reasonable doubt certain essential elements, and the essential
14 elements of this charge are as follows.

15 And I can go on and say that I usually do that 12
16 individuals must find beyond a reasonable doubt that you did or
17 the corporation did these things, and the 12 individuals will
18 be selected at random from the community, and you and I will
19 participate in the selection of those 12 people.

20 The elements of this conspiracy are these: that the
21 conspiracy, agreement, or understanding described in the
22 Information was knowingly formed and was in existence at or
23 about the time alleged, which is beginning on January 1, 2001,
24 and continuing until July 17th, 2007.

25 The next element is that the defendant corporation

1 knowingly became a member of the conspiracy, agreement, or
2 understanding, as charged, and the alleged conspiracy
3 constituted unreasonable restraint of interstate commerce, and
4 the offense was carried out in part in the Southern District of
5 Ohio within the five years preceding the filing of the
6 Information.

7 The Southern District of Ohio, for your information, is the
8 southern part of Ohio. If you would draw a line across the
9 state just north of Columbus, therefore, the land south of that
10 line to the river, the Ohio River, is the Southern District.
11 The city of Cincinnati, Hamilton County, Butler County,
12 Clermont County, Warren County, are all in the Southern
13 District of Ohio, for your information.

14 Now, do you understand that if you enter your plea of
15 guilty, you will admit that the corporation did all of those
16 things beyond a reasonable doubt?

17 MR. ADAMS: I understand that, Your Honor.

18 THE COURT: Now, do you understand what the maximum
19 possible penalty for this is, for this crime is?

20 MR. ADAMS: I have been told. To be honest, I don't
21 recall the specific number at the moment.

22 THE COURT: Well, we'll go over them together and make
23 sure that I get them all.

24 It's up to a hundred million dollar fine or two times the
25 gross pecuniary loss or gain, and up to five years' probation,

1 a \$400 special assessment, and restitution.

2 Do you have any questions about this maximum penalty?

3 MR. ADAMS: No questions, Your Honor.

4 THE COURT: And as far as I know, there is no minimum
5 penalty.

6 Is that correct, Mr. Culum?

7 MR. CULUM: Your Honor --

8 THE COURT: It's at \$20,000 for individuals. Does
9 that also apply to corporations?

10 MR. CULUM: You know, I've never thought that through.
11 I don't think there is a minimum.

12 THE COURT: Well, anyway, there is no mandatory
13 minimum. We'll put it that way.

14 So now with that maximum penalty in mind, do you understand
15 that the Court will impose a sentence that is not greater than
16 necessary to achieve the purposes of Congress set forth in 18,
17 United States Code, Section 3553? And those factors or
18 elements that we will consider at the time of sentencing to
19 determine a just penalty in this case that is sufficient but
20 not greater than necessary are these: the nature and circum-
21 stances of the offense, the history and characteristics of the
22 defendant, the need for the sentence imposed to reflect the
23 seriousness of the offense, to promote respect for the law, and
24 to provide just punishment for the offense, to afford adequate
25 deterrence to criminal conduct, to protect the public from

1 further crimes the defendant may commit, and to provide the
2 defendant with needed educational, vocational training, medical
3 care, or other correctional treatment in the most effective
4 manner --

5 That will be interesting.

6 -- the kinds of sentences available and the kinds of
7 sentences and the sentencing range established by the
8 application of the United States Guidelines to the particular
9 facts of this case.

10 Now, I understand that you have discussed with your
11 attorneys the application of the Guidelines to this case.

12 MR. ADAMS: Yes, I have, Your Honor.

13 THE COURT: And what is your understanding as to the
14 Guidelines?

15 MR. ADAMS: Well, the Guidelines are set out to give
16 the Court some range and some measuring stick. My
17 understanding is that -- the discussion that we have had
18 through our counsel -- is something less than what the
19 Guidelines allow for.

20 THE COURT: And do you understand that the Guidelines
21 are advisory as far as their effect upon my sentence is
22 concerned?

23 MR. ADAMS: Yes, I understand that.

24 THE COURT: And do you understand that my duty is to
25 impose a sentence that is sufficient but not greater than

1 necessary?

2 MR. ADAMS: That is understood.

3 THE COURT: And you understand that after the
4 corporation has been sentenced, they would have no right to
5 withdraw their guilty plea?

6 MR. ADAMS: That is understood.

7 THE COURT: Now, since you know the maximum penalty
8 the judge can impose, does the corporation still authorize you
9 to plead guilty?

10 MR. ADAMS: Yes, Your Honor.

11 THE COURT: And do you understand that I may or may
12 not place the defendant on probation?

13 MR. ADAMS: I understand that, Your Honor.

14 THE COURT: I advise you that under the Constitution
15 and laws of the United States, the corporation has the right to
16 plead not guilty. It has the right to be tried by a jury, and
17 at such a speedy and public trial, it would have the right to
18 the assistance of a lawyer, the right to confront and cross-
19 examine witnesses against the corporation, and the right not to
20 be compelled to incriminate itself. At such a trial it would
21 be presumed innocent until such time, if ever, as the
22 government established its guilt by legal evidence beyond a
23 reasonable doubt. At such a trial it would be entitled to
24 compulsory process, to call witnesses on its behalf.

25 Do you understand that if your plea of guilty is accepted

1 that you must relinquish or give up all these rights that I
2 have mentioned?

3 MR. ADAMS: That is understood, Your Honor.

4 THE COURT: Do you understand that if you plead
5 guilty, there will not be a further trial of any kind in this
6 case, so that by pleading guilty the corporation is waiving and
7 relinquishing the right to a trial?

8 MR. ADAMS: I understand that, Your Honor.

9 THE COURT: Do you understand that if the plea is
10 accepted, the Court may impose the same penalty as though the
11 corporation pled not guilty, stood trial, and was convicted by
12 a jury?

13 MR. ADAMS: I understand, Your Honor.

14 THE COURT: If it pleads guilty, do you understand
15 that you'll also have to give up your right not to incriminate
16 the corporation, since I will have to ask you questions about
17 what the corporation did in order to satisfy me that you are
18 guilty as charged, and you will have to acknowledge the
19 corporate guilt?

20 MR. ADAMS: That is understood.

21 THE COURT: Are you willing to give -- is the
22 corporation willing to give up its right to a trial and the
23 other rights we have just discussed?

24 MR. ADAMS: Yes, Your Honor.

25 THE COURT: Proper plea agreements are permissible.

1 However, you and the lawyers have a duty to disclose the terms
2 of any plea agreement in this case. I'm going to ask Mr. Culum
3 to display the Plea Agreement on the record. I'm going to ask
4 you to follow along, because after he has concluded his
5 presentation, I will ask you some questions about it.

6 And, Mr. Axelrod, I will give you an opportunity to comment
7 if you choose to do so.

8 MR. ADAMS: Thank you, Your Honor.

9 THE COURT: Proceed, Mr. Culum.

10 MR. CULUM: Thank you, Your Honor.

11 The Plea Agreement is entitled "*United States of America v.*
12 *Arctic Glacier International Inc.*"

13 Caption: Plea Agreement.

14 The United States of America and Arctic Glacier
15 International Inc., the defendant, a corporation organized and
16 existing under the laws of the state of Delaware, and with its
17 principal place of business in St. Paul, Minnesota, hereby
18 enter into the following Plea Agreement pursuant to United
19 States -- pursuant to Rule 11 (c) (1) (C) of the Federal Rules of
20 Criminal Procedure:

21 Caption: Rights Of Defendant.

22 Paragraph 1. The defendant understands its rights:

23 (a) to be represented by an attorney;

24 (b) to be charged by Indictment;

25 (c) as a corporation organized and existing under the laws

1 of Delaware, to decline to accept service of the Summons in
2 this case, and to contest the jurisdiction of the United States
3 to prosecute this case against it in the United States District
4 Court for the Southern District of Ohio;

5 (d) to plead not guilty to any criminal charge brought
6 against it;

7 (e) to have a trial by jury, at which it would be presumed
8 not guilty of the charge and the United States would have to
9 prove every essential element of the charged offense beyond a
10 reasonable doubt for it to be found guilty;

11 (f) to confront and cross-examine witnesses against it and
12 to subpoena witnesses in its defense at trial;

13 (g) to appeal its conviction if it is found guilty; and

14 (h) to appeal the imposition of sentence against it.

15 Caption: Agreement To Plead Guilty And Waive Certain
16 Rights.

17 Paragraph 2. The defendant knowingly and voluntarily
18 waives the rights set out -- the rights set out in paragraph
19 1(b) through (g) above. The defendant also knowingly and
20 voluntarily waives the right to file any appeal, any collateral
21 attack, or any other writ or motion, including but not limited
22 to, an appeal under 18 U.S.C. Section 3742 that challenges the
23 sentence imposed by the Court if that sentence is consistent
24 with or below the applicable Guidelines range in paragraph 8 of
25 this Plea Agreement, regardless of how the sentence is

1 determined by the Court. This agreement does not affect the
2 rights or obligations of the United States as set forth in
3 United States -- in 18 U.S.C. Section 3742. Nothing in this
4 paragraph, however, shall act as a bar to the defendant
5 perfecting any legal remedies it may otherwise have on appeal
6 or collateral attack respecting claims of ineffective
7 assistance of counsel or prosecutorial misconduct. The
8 defendant agrees that there is currently no known evidence of
9 ineffective assistance of counsel or prosecutorial misconduct.
10 Pursuant to Federal Rule of Criminal Procedure 7(b), the
11 defendant will waive indictment and plead guilty at arraignment
12 to a one-count Information to be filed in the United States
13 District Court for the Southern District of Ohio. The
14 Information will charge the defendant with participating in a
15 conspiracy to suppress and eliminate competition by agreeing
16 with or -- with one or more other packaged-ice manufacturers to
17 allocate customers in southeastern Michigan and the Detroit,
18 Michigan, metropolitan area, beginning January 1st, 2001, and
19 continuing until at least July 17th, 2007, in violation of the
20 Sherman Antitrust Act, 15 U.S.C. Section 1.

21 Paragraph 3. The defendant, pursuant to the terms of this
22 Plea Agreement, will plead guilty to the criminal charge
23 described in paragraph 2 above and will make a factual
24 admission of guilt to the Court in accordance with Federal Rule
25 of Criminal Procedure 11, as set forth in paragraph 4 below.

1 Caption. Factual Basis For Offense Charged.

2 Paragraph 4. Had this case gone to trial, the United
3 States would have presented evidence sufficient to prove the
4 following facts:

5 (a) For purposes of this Plea Agreement, the relevant
6 period is that period beginning January 1st, 2001, and
7 continuing until at least July 17th, 2007. During the relevant
8 period, the defendant was a corporation organized and existing
9 under the laws of Delaware. During the relevant period, the
10 defendant acquired various packaged-ice manufacturers doing
11 business in Michigan. During the relevant period, the
12 defendant, through its parent and subsidiary corporations,
13 collectively "Arctic Glacier," was a producer of packaged ice
14 in multiple states and was engaged in the sale of packaged ice.
15 Packaged ice is marketed for human consumption and is sold in
16 blocks and various bag sizes. During the relevant period, the
17 defendant's Michigan subsidiaries employed more than 200 full-
18 time-equivalent employees, but less than 1,000. During the
19 relevant period, Arctic Glacier's sales of packaged ice
20 affected by the conspiracy totaled 50.7 million.

21 Paragraph (b). During the relevant period, the defendant,
22 through certain of its executives and employees of its
23 subsidiary corporations and its predecessor company acquired in
24 December 2004, participated in a conspiracy to allocate
25 customers of packaged ice sold in southeastern Michigan and the

1 Detroit, Michigan, metropolitan area. In furtherance of the
2 conspiratorial activity, the defendant, through certain of its
3 executives and employees of its subsidiary corporations and
4 predecessor company acquired in December 2004, engaged in
5 discussions and attended meetings with representatives of one
6 or more other packaged-ice producers. During these discussions
7 and meetings, agreements were reached to allocate customers of
8 packaged ice in southeastern Michigan and the Detroit,
9 Michigan, metropolitan area.

10 (c) During the relevant period, packaged ice was sold by
11 one or more of the conspirator firms, and equipment and
12 supplies necessary to the production and distribution of
13 packaged ice, as well as payments for packaged ice, traveled in
14 interstate commerce. The business activities of Arctic Glacier
15 and its co-conspirator in connection with the production and
16 sale of packaged ice affected by the conspiracy were within the
17 flow of, and substantially affected, interstate trade and
18 commerce.

19 (d) Acts in furtherance of this conspiracy were carried out
20 within the Southern District of Ohio, Western Division. At
21 least one of the conspiratorial meetings or discussions
22 described above took place in Cincinnati, Ohio, which is
23 located within the Southern District of Ohio.

24 Caption: Possible Maximum Sentence.

25 Paragraph 5. The defendant understands that the statutory

1 maximum penalty which may be imposed against it upon conviction
2 for a violation of Section 1 of the Sherman Antitrust Act is a
3 fine in the amount equal to the greatest of:

4 (a) 100 million, 15 U.S.C. Section 1;

5 (b) twice the gross pecuniary gain the conspirators derived
6 from the crime, 18 U.S.C. Section 3571(c) and (d); or

7 (c) twice the gross pecuniary loss caused to the victims of
8 the crime by the conspirators, 18 U.S.C. Section 3571(c) and
9 (d).

10 Paragraph 6. In addition, the defendant understands that:

11 (a) pursuant to 18 U.S.C. Section 3561(c)(1), the Court may
12 impose a term of probation of at least one year, but not more
13 than five years;

14 Paragraph (b) pursuant to Section 8B1.1 of the United
15 States Sentencing Guidelines or 18 U.S.C. Sections 3563(b)(2)
16 or 3663(a)(3), the Court may order it to pay restitution to the
17 victims of the offense; and

18 (c) pursuant to 18 U.S.C. Section 3013(a)(2)(B), the Court
19 is required to order the defendant to pay a \$400 special
20 assessment upon conviction for the charged crime.

21 Caption: Sentencing Guidelines.

22 Paragraph 7. The defendant understands that the Sentencing
23 Guidelines are advisory, not mandatory, but that the Court must
24 consider the Guidelines in effect on the day of sentencing,
25 along with other factors set forth in 18 U.S.C. Section

1 3553(a), in determining and imposing sentence. The defendant
2 understands that the Guidelines determination will be made by
3 the Court by a preponderance of the evidence standard. The
4 defendant understands that although the Court is not ultimately
5 bound to impose a sentence within the applicable Guideline
6 range, its sentence must be reasonable based upon consideration
7 of all relevant sentencing factors set forth in 18 U.S.C.
8 Section 3553(a). Pursuant to 18 -- pursuant to United States
9 Sentencing Guideline Section 1B1.8, the United States agrees
10 that self-incriminating information that the defendant provides
11 to the United States pursuant to this Plea Agreement will not
12 be used to increase the volume of affected commerce
13 attributable to the defendant or in determining the defendant's
14 applicable Guideline range, except to the extent provided in
15 United States Sentencing Guidelines Section 1B1.8(b).

16 Sentencing Agreement.

17 Paragraph 8. Pursuant to Federal Rule of Criminal
18 Procedure 11(c)(1)(C), the United States and the defendant
19 agree that the appropriate disposition of this case is, and
20 agree to recommend jointly that the Court impose, a sentence
21 requiring the defendant to pay the United States a criminal
22 fine of \$9 million, payable in installments as set forth below,
23 with interest accruing under 18 U.S.C. Section 3612(f)(1)-(2).

24 Paragraph (a). The defendant understands that the Court
25 will order it to pay a \$400 special assessment, pursuant to 18

1 U.S.C. Section 3013(a)(2)(B), in addition to any fine imposed;

2 (b) the United States and defendant agree to recommend, in
3 the interest of justice pursuant to 18 U.S.C. Section

4 3572(d)(1), the United States Sentencing Guideline 8C3.2(b),

5 that the fine be paid in the following installments: within 30

6 days of imposition of sentencing, \$1 million plus any agreed

7 interest; at the one-year anniversary of imposition of the

8 sentence, "anniversary," \$1 million plus any accrued interest;

9 at the two-year anniversary, \$1.5 million plus any accrued

10 interest; at the three-year anniversary, \$1.5 million plus any

11 accrued interest; at the four-year anniversary, \$1.5 million

12 plus any accrued interest; and at the five-year anniversary,

13 \$2.5 million plus any accrued interest; provided, however, that

14 the defendant shall have the option at any time before the

15 five-year anniversary of prepaying any part of the remaining

16 balance plus any accrued interest then owing on the fine.

17 Paragraph 9. The parties agree that they are not aware at

18 this time of any aggravating or mitigating circumstance of a

19 kind, or to a degree, not adequately taken into consideration

20 by the United States Sentencing Commission in formulating the

21 Sentencing Guidelines justifying a departure pursuant to United

22 States Sentencing Guidelines Section 5K2.0. The parties agree

23 not to seek or support any sentence outside of the Guidelines

24 range nor any Guidelines adjustment for any reason that is not

25 set forth in this Plea Agreement.

1 Paragraph 10. The United States and the defendant agree
2 that the applicable Guidelines fine range exceeds the fine
3 contained in the recommended sentence set out in paragraph 8
4 above. Subject to the full and continuing cooperation of the
5 defendant as set forth in paragraph 14 of this Plea Agreement,
6 and prior to the sentencing in this case, the United States
7 agrees it will not -- that it will make a motion, pursuant to
8 United States Sentencing Guidelines Section 8C4.1, for a
9 downward departure from the Guideline fine range and will
10 request that the Court impose the recommended sentence set out
11 in paragraph 8 of this Plea Agreement because of the
12 defendant's substantial assistance in the government's
13 investigation and prosecution of the violation of federal
14 criminal law in the packaged-ice industry.

15 Paragraph 11. Subject to the ongoing, full, and truthful
16 cooperation of the defendant described in paragraph 14 of this
17 Plea Agreement, and before sentencing in this case, the United
18 States will fully advise the Court and the probation office of
19 the fact, manner, and extent of defendant's cooperation and its
20 commitment to prospective cooperation with the United States'
21 investigation and prosecutions, all material facts relating to
22 the defendant's involvement in the charged offense, and all
23 other relevant conduct.

24 Paragraph 12. The United States and the defendant
25 understand that the Court retains complete discretion to accept

1 or reject the recommended sentence.

2 (a) If the Court does not accept the recommended sentence,
3 the United States and the defendant agree that this Plea
4 Agreement, except for paragraph 12(b) below, shall be rendered
5 void.

6 (b) If the Court does not accept the recommended sentence,
7 the defendant will be free to withdraw its guilty plea, Federal
8 Rule of Criminal Procedure 11(c)(5) and (d). If the defendant
9 withdraws its plea of guilty, this Plea Agreement, the guilty
10 plea, and any statements made in the course of any proceedings
11 under Federal Rule of Criminal Procedure 11 regarding the
12 guilty plea or this Plea Agreement or made in the course of
13 plea discussion with an attorney for the government shall not
14 be admissible against the defendant in any criminal or civil
15 proceeding, except as otherwise provided in Federal Rule of
16 Evidence 410. In addition, the defendant agrees that if it
17 withdraws its guilty plea pursuant to this subparagraph of the
18 Plea Agreement, the statute of limitations period for any
19 offense referred to in paragraph 16 of this Plea Agreement
20 shall be tolled for the period between the date of the signing
21 of the Plea Agreement and the date the defendant withdrew its
22 guilty plea or for a period of 60 days after the date of the
23 signing of the Plea Agreement, whichever period is greater.

24 Paragraph 13. In light of the availability of civil causes
25 of action available pursuant to 15 U.S.C. Section 15, the

1 United States agrees that it will not seek a restitution order
2 for the offense charged in the Information.

3 Caption: Defendant's Cooperation.

4 Paragraph 14. Arctic Glacier will cooperate fully and
5 truthfully with the United States in the prosecution of this
6 case, the conduct of the current federal investigation of
7 violations of federal antitrust and related criminal laws
8 involving the sale of packaged ice in the United States, any
9 other federal investigation resulting therefrom, and any
10 litigation or other proceedings arising or resulting from any
11 such investigation to which the United States is a party. The
12 ongoing, full, and truthful cooperation of Arctic Glacier shall
13 include, but not be limited to:

14 (a) producing to the United States all non-privileged
15 documents, information, and other materials wherever located,
16 in the possession, custody, or control of Arctic Glacier,
17 requested by the United States in connection with any federal
18 proceeding;

19 (b) using its best efforts to secure the ongoing, full, and
20 truthful cooperation, as defined in paragraph 15 of this Plea
21 Agreement, of its current and former directors, officers, and
22 employees of Arctic Glacier as may be requested by the United
23 States, but excluding Keith E. Corbin, Gary D. Cooley, and
24 Frank G. Larson, including making these persons available in
25 the United States and at other mutually-agreed-upon locations,

1 at the defendant's expense, for interviews and the provision of
2 testimony in grand jury, trial, and other judicial proceedings
3 in connection with any federal proceeding.

4 Paragraph 15. The ongoing, full, and truthful cooperation
5 of each person described in paragraph 14(b) above will be
6 subject to the procedures and protections of this paragraph,
7 and shall include, but not be limited to:

8 (a) producing all non-privileged documents, including
9 claimed personal documents, and other materials, wherever
10 located, requested by attorneys and agents of the United
11 States;

12 (b) making himself or herself available for interviews, not
13 at the expense of the United States, upon the request of
14 attorneys and agents of the United States;

15 (c) responding fully and truthfully to all of the inquiries
16 of the United States in connection with any federal proceeding,
17 without falsely implicating any person or intentionally
18 withholding any information, subject to the penalties of making
19 false statements, 18 U.S.C. Section 1001, and obstruction of
20 justice, 18 U.S.C. Section 1503;

21 (d) otherwise voluntarily providing the United States with
22 any non-privileged material or information not requested in (a)
23 through (c) of this paragraph that he or she may have that is
24 related to any federal proceeding;

25 (c) when called upon to do so by the United States in

1 connection with any federal proceeding, testifying in grand
2 jury, trial, and other judicial proceedings fully, truthfully,
3 and under oath, subject to the penalties of perjury, 18 U.S.C.
4 Section 1621, making false statements or declarations in grand
5 jury or court proceedings, 18 U.S.C. Section 1623, contempt, 18
6 U.S.C. Section 401 and 402, and obstruction of justice, 18
7 U.S.C. Section 1503, et sequentes; and

8 (f) agreeing that, if the agreement not to prosecute him or
9 her in this Plea Agreement is rendered void under paragraph
10 17(c), the statute of limitations period for any relevant
11 offense as defined in paragraph 15(a) will be tolled as to him
12 or her for the period between the date of the signing of this
13 Plea Agreement and six months after the date that the United
14 States gave notice of its intent to void its obligation to that
15 person under the Plea Agreement.

16 Caption: Government's Agreement.

17 Paragraph 16. Upon acceptance of the guilty plea called
18 for by this Plea Agreement, and subject to the cooperation
19 requirements of paragraph 14 of this Plea Agreement, the United
20 States agrees that it will not bring further criminal charges
21 against Arctic Glacier for any act or offense committed before
22 the date of this Plea Agreement that was undertaken in
23 furtherance of an attempted or completed antitrust conspiracy
24 involving the sale of packaged ice in the United States or
25 undertaken in connection with any investigation of such a

1 conspiracy. The non-prosecution terms of this paragraph do not
2 apply to civil matters of any kind, to any violation of federal
3 tax or securities laws, or to any crime of violence.

4 Paragraph 17. The United States agrees to the following:

5 (a) Upon the Court's acceptance of the guilty plea called
6 for by this Plea Agreement and the imposition of its sentence,
7 and subject to the exceptions noted in paragraph 15(c), the
8 United States will not bring criminal charges against any
9 current or former director, officer, or employee of Arctic
10 Glacier for any act or offense committed before the date of
11 this Plea Agreement and while that person was acting as a
12 director, officer, or employee of Arctic Glacier that was
13 undertaken in furtherance of an antitrust conspiracy involving
14 the sale of packaged ice in the United States or undertaken in
15 connection with any investigation of such a conspiracy,
16 "relevant offense," except that the protections in this
17 paragraph shall not apply to Keith E. Corbin, Gary D. Cooley,
18 and Frank G. Larson;

19 (b) Should the United States determine that any current or
20 former director, officer, or employee of Arctic Glacier may
21 have information relevant to any federal proceeding, the United
22 States may request that person's cooperation under the terms of
23 this Plea Agreement by written request delivered to counsel for
24 the individual, with a copy to the undersigned counsel for the
25 defendant, or if the individual is not known by the United

1 States to be represented, to the undersigned counsel for the
2 defendant;

3 (c) If any person requested to provide cooperation under
4 paragraph 14(b) fails to comply with this obligation, with the
5 obligations under paragraph 15, then the terms of this Plea
6 Agreement as they pertain to that person, and the agreement not
7 to prosecute that person granted in this Plea Agreement, shall
8 be rendered void;

9 (d) Except as provided in paragraph 16(e), information
10 provided by a person described in paragraph 16(b) to the United
11 States under the terms of this Plea Agreement pertaining to any
12 relevant offense, or any information directly or indirectly
13 derived from that information, may not be used against that
14 person in a criminal case, except in a prosecution for perjury,
15 18 U.S.C. Section 1621, making a false statement or
16 declaration, 18 U.S.C. Section 1001 and 1623, or obstruction of
17 justice, 18 U.S.C. 1503, et sequentes;

18 (e) If any person who provides information to the United
19 States under this Plea Agreement fails to comply fully with the
20 obligations under paragraph 15 of this Plea Agreement, the
21 agreement in paragraph 16(d) not to use that information or any
22 information directly or indirectly derived from it against that
23 person in a criminal case shall be rendered void;

24 (f) The non-prosecution terms of this paragraph do not
25 apply to civil matters of any kind, to any violation of the

1 federal tax or securities laws, or to any crimes of violence;
2 and

3 (g) Documents provided under paragraphs 14(a) and 15(a)
4 shall be deemed responsive to outstanding grand jury subpoenas
5 issued to the defendant.

6 Paragraph 18. The United States agrees that when any
7 person travels to the United States for interviews, grand jury
8 appearances, or court appearances pursuant to this Plea
9 Agreement, or for meetings with counsel in preparation
10 therefor, the United States will take no action, based upon any
11 relevant offense, to subject such person to arrest, detention,
12 or service of process, or to prevent such person from departing
13 the United States. This paragraph does not apply to an
14 individual's commission of perjury, 18 U.S.C. Section 1621,
15 making false statements, 18 U.S.C. Section 1001, making false
16 statements or declarations in grand jury or court proceedings,
17 18 U.S.C. Section 1623, obstruction of justice, 18 U.S.C.
18 Section 1503, or contempt, 18 U.S.C. Section 401-402, in
19 connection with any testimony or information provided or
20 requested in any federal proceeding.

21 Paragraph 19. The defendant understands that it may be
22 subject to administrative action by federal or state agencies
23 other than the United States Department of Justice, Antitrust
24 Division, based upon the conviction resulting from this Plea
25 Agreement, and that this Plea Agreement in no way controls

1 whatever action, if any, other agencies may take. However, the
2 United States agrees that, if requested, it will advise the
3 appropriate officials of any governmental agency considering
4 such administrative action of the fact, manner, and extent of
5 the cooperation of Arctic Glacier as a matter for that agency
6 to consider before determining what administrative action, if
7 any, to take.

8 Caption: Representation By Counsel.

9 Paragraph 20. The defendant has been represented by
10 counsel and is fully satisfied that its attorneys have provided
11 competent legal representation. The defendant has thoroughly
12 reviewed this Plea Agreement and acknowledges that counsel has
13 advised it of the nature of the charge, any possible defenses
14 to the charge, and the nature and range of possible sentences.

15 Caption: Voluntary Plea.

16 Paragraph 21. The defendant's decision to enter into this
17 Plea Agreement and to tender a plea of guilty is freely and
18 voluntarily made and is not the result of force, threats,
19 assurances, promises, or representations other than the
20 representations contained in this Plea Agreement. The United
21 States has made no promises or representations to the defendant
22 as to whether the Court will accept or reject the
23 recommendations contained within this Plea Agreement.

24 Violation Of Plea Agreement.

25 Paragraph 22. The defendant agrees that, should the United

1 States determine in good faith, during the period that any
2 federal proceeding is pending, that Arctic Glacier has failed
3 to provide full and truthful cooperation, as described in
4 paragraph 14 of this Plea Agreement, or has otherwise violated
5 any provision of this Plea Agreement, the United States will
6 notify counsel for the defendant in writing by personal or
7 overnight delivery or facsimile transmission and may also
8 notify counsel by telephone of its intention to void any of its
9 obligations under this Plea Agreement, except its obligations
10 under this paragraph, and Arctic Glacier shall be subject to
11 prosecution for any federal crime of which the United States
12 has knowledge including, but not limited to, the substantive
13 offenses relating to the investigation resulting in this Plea
14 Agreement. The defendant agrees that, in the event that the
15 United States is released from its obligations under this Plea
16 Agreement and brings a criminal charge against Arctic Glacier
17 for any offense referred to in paragraph 14 of this Plea
18 Agreement, the statute of limitations period for such offense
19 will be tolled for the period between the date of the signing
20 of this Plea Agreement and six months after the date the United
21 States gave notice of its intent to void its obligations under
22 this Plea Agreement.

23 Paragraph 23. The defendant understands and agrees that in
24 any further prosecution of it resulting from the release of the
25 United States from its obligations under this Plea Agreement,

1 because of Arctic Glacier's violation of the Plea Agreement,
2 any document, statement, information, testimony, or evidence
3 provided by it or any individual identified by the United
4 States pursuant to paragraphs 14(b) or 15(b) to attorneys or
5 agents of the United States, federal grand juries, or courts,
6 and any leads derived therefrom, may be used against it in any
7 such further prosecution. In addition, Arctic Glacier
8 unconditionally waives its right to challenge the use of such
9 evidence in any further prosecution, notwithstanding the
10 protections of Federal Rule of Evidence 408 and Federal Rule of
11 Evidence 410.

12 Entirety Of The Agreement, caption.

13 Paragraph 24. This Plea Agreement constitutes the entire
14 agreement between the United States and the defendant
15 concerning the disposition of the criminal charge in this case.
16 The Plea Agreement cannot be modified except in writing, signed
17 by the United States and the defendant.

18 Paragraph 25. The undersigned is authorized to enter this
19 Plea Agreement on behalf of the defendant as evidenced by the
20 resolution of the board of directors of the defendant attached
21 and incorporated by reference in this Plea Agreement.

22 Paragraph 26. The undersigned attorneys for the United
23 States have been authorized by the Attorney General of the
24 United States to enter this Plea Agreement on behalf of the
25 United States.

1 The Plea Agreement, unfortunately, is not dated. It is
2 signed by Hugh Adams, corporate secretary, Arctic Glacier
3 International; John Majoras, counsel, Jones Day; signed by
4 myself, Kevin Culum.

5 THE COURT: Mr. Adams, do you have any questions about
6 this Plea Agreement?

7 MR. ADAMS: No questions, Your Honor.

8 THE COURT: Has the Plea Agreement correctly set forth
9 your agreements and the corporation's agreements that they have
10 made in this document?

11 MR. ADAMS: Yes, it does, Your Honor.

12 THE COURT: And are those representations and
13 agreements true?

14 MR. ADAMS: They are true.

15 THE COURT: I would like just a clarification. From
16 my information, it would be the 14(b) and 15, the relationship
17 between 14(b) and 15. The 14(b) discusses or mentions the
18 three defendants that I've already accepted a plea to, and I
19 just want to be sure I understand what in the world's going on
20 here, because I'm not going to -- right up front, I'm not going
21 to accept any interference with my conduct of those cases.

22 MR. CULUM: Your Honor, we use the term "carve out"
23 individuals from a plea agreement, so that those three
24 individuals could not seek the protection of this Plea
25 Agreement and we would be -- we resolved their liability

1 independent of the company. And that's the interaction of the
2 two, that Arctic Glacier can't insist on their cooperation, nor
3 can the individuals seek the protections of the Plea Agreement.
4 So they are carved out.

5 Does that answer your question, Your Honor?

6 THE COURT: Is that your understanding, Mr. Majoras?

7 MR. MAJORAS: Yes, it is, Your Honor.

8 THE COURT: My problem being is that I want to be
9 absolutely assured that this Plea Agreement won't become void
10 because of what I do in the three independent cases involved,
11 that I am involved in.

12 MR. CULUM: Your Honor, the individuals know that they
13 cannot claim the protection of this Plea Agreement and that
14 their plea agreement resolves their own liability.

15 MR. MAJORAS: That is our understanding as well, Your
16 Honor.

17 THE COURT: All right. Mr. Adams, is that the
18 corporate's understanding?

19 MR. ADAMS: It is, Your Honor.

20 THE COURT: Then if you would explain the purpose of
21 17(g).

22 MR. CULUM: Your Honor, because of the protections of
23 6(e), we typically include these documents so that we don't
24 have to continually provide serial grand jury subpoenas, that
25 the documents that we identify are considered grand jury

1 documents.

2 My understanding is that in civil litigation there's
3 certain issues as to whether something was subpoenaed by the
4 grand jury or not, and the Department typically puts these in
5 all plea agreements, corporate plea agreements, so that it
6 clarifies that these documents are supplied pursuant to the
7 grand jury subpoena.

8 THE COURT: The reason I ask the question is, does it
9 interfere with my obligation to administer the Federal Criminal
10 Rule of Procedure 6(e) if I get involved in a determination of
11 whether these documents will be released?

12 MR. CULUM: Well, the documents that would be provided
13 to you, that would be your issue, and those documents -- we
14 would have to think that through, but this specifically only
15 speaks about documents that are provided in the future to the
16 United States Department of Justice.

17 THE COURT: And you understand my concern, because I
18 do not want to disrupt this proceeding in the event I decide
19 that some grand jury --

20 And I assume the grand juries are meeting in this district.

21 MR. CULUM: Your Honor, I certainly can't answer that,
22 but I could talk to you ex parte about where.

23 THE COURT: All right. But anyway, what I'm concerned
24 with, if I am responsible to administer an issue that arises
25 under 16(e) in relationship to the documents that may come to

1 my attention belonging to Arctic, I wonder if that's intended
2 to interfere with that decision.

3 MR. CULUM: Your Honor, it should not. If they're
4 documents that are provided to you, I think the issue would
5 just be -- my understanding is anything provided to the Court
6 along PSRs are considered confidential, and the release has
7 their own -- the rules of release are independent of 6(e).

8 If we provide you information, we're providing it
9 confidentially. We're not -- you know, we're not going to be
10 releasing 6(e) information necessarily, so this -- this
11 paragraph goes specifically to documents that we request from
12 Arctic Glacier either in the past or in the future, but this is
13 not binding you in terms of the 6(e) issue. I mean, I think
14 the PSR issue is a separate issue, but the 6(e) issue, I think
15 we can resolve that.

16 And, Your Honor, I wanted to address something, that there
17 was a public announcement by Arctic Glacier in March of 2007
18 that they had received a grand jury subpoena from the Eastern
19 District of Michigan. So that's public information which you
20 probably are aware of, but I just thought that I would alert
21 you to that they announced publicly that they received a grand
22 jury subpoena from the Eastern District of Michigan.

23 THE COURT: Mr. Majoras, do you wish to add anything
24 to the record on that point?

25 MR. MAJORAS: No, sir. What Mr. Culum said is

1 consistent with my understanding.

2 THE COURT: Mr. Adams, do you have any questions about
3 the situation that I've tried to straighten out? I'm not so
4 sure I have. But I raise the issue that I have some concern
5 that I do not intend to lose any control over my obligations to
6 administer the law in this case by this Plea Agreement.

7 MR. ADAMS: I don't have any questions. My under-
8 standing is that your jurisdiction is unfettered.

9 THE COURT: All right. Thank you.

10 Aside from -- well, has anyone made any promise, other than
11 the Plea Agreement, that induced the corporation to plead
12 guilty?

13 MR. ADAMS: No, Your Honor.

14 THE COURT: And aside from the Plea Agreement, which
15 we've been discussing, has any person, including an officer or
16 agent of the government, a lawyer, anyone, promised or even
17 suggested that the corporation should receive a lighter
18 sentence or any other form of leniency if it pleads guilty?

19 MR. ADAMS: No, Your Honor.

20 THE COURT: And have any threats been made which
21 induced the corporation and its board to plead guilty?

22 MR. ADAMS: There have been no threats made, Your
23 Honor.

24 THE COURT: Mr. Axelrod, is there anything you wish to
25 discuss at this time?

1 MR. AXELROD: There is, Your Honor. May I use the
2 lecturn?

3 THE COURT: If you wish.

4 MR. AXELROD: Thank you. My training and 25 years of
5 experience cause me to want to stand at a lecturn when I
6 address a federal Court.

7 First, Your Honor, I assure you that the size of the stack
8 of papers in front of me is in no way indicative of the length
9 of what I hope to tell the Court.

10 I first wanted to apprise the Court of our discussion since
11 the last proceeding with both the government and with the
12 defendant. Two lawyers involved in the class action in the
13 Eastern District of Michigan traveled to Cleveland, and I drove
14 to Cleveland, to meet with Mr. Culum, Mr. Lyon, their chief Mr.
15 Watson, and one other attorney from the Antitrust Division, and
16 discussed our concerns at considerable length. I've also
17 spoken to Mr. Majoras by telephone about our concerns.

18 I think I'm a pretty persuasive guy, but they are equally
19 committed to this Plea Agreement and were unwilling to agree to
20 any modifications of it to accommodate the interests of the
21 victims. So for that reason I'm here to alert the Court to our
22 concerns. I'm not going to ask the Court today for any
23 specific relief. We're going to continue to try to talk with
24 the parties and resolve our objections amicably, but there may
25 come a time, in fact, I think, based on what I've been told in

1 the last week or so, it's probably likely that we will wind up
2 submitting written objections to the Court.

3 Your Honor, we have two interests in this proceeding. One
4 is in sunlight, in having all of the facts regarding the
5 conspiracy that's involved in this case come to light, and the
6 other interest is in the preservation of assets to pay
7 restitution. As the Court's comments at the last proceeding
8 suggested, we are concerned about the amount of restitution, on
9 which I'll comment in a moment, but we're also concerned about
10 the defendant's ability to pay either the fine requested in the
11 Plea Agreement or the restitution that we hope to request.

12 First, with respect to disclosure of the conspiracy, Your
13 Honor, we believe there's evidence certainly sufficient to
14 cause the Court to want to inquire about the existence of a
15 nationwide conspiracy. The existence of a nationwide
16 conspiracy to allocate territory and fixed prices would be
17 relevant conduct under the Guidelines under Section
18 1B1.3(a)(2).

19 First, Your Honor, there is a whistleblower named Mr.
20 McNulty who alleges that there was a nationwide conspiracy and
21 has brought litigation in connection with that. Second,
22 there's the fact that even in the warm weather states where it
23 would make sense for this defendant, Ready Ice, and Home City
24 Ice to compete, there is no competition, which we believe
25 suggests -- particularly in light of the conspiracy that's

1 being admitted here today -- a conspiracy to allocate
2 territory. We think it would defy credulity to believe that it
3 was a coincidence that in states like Tennessee and Florida
4 these companies simply choose not to compete without having
5 agreed not to compete.

6 Third, Your Honor, the Plea Agreement reflects the
7 nationwide scope of the conspiracy. First, there is a 1B1.8
8 cooperation provision which the Court has already heard about,
9 and having been a federal prosecutor for seven and a half
10 years, I can assure the Court that the government doesn't put
11 those provisions in plea agreements unless there actually is
12 something for the defendant to say, and there's reason to
13 believe that they have information useful to the government.
14 So that suggests to us that there is more here than meets the
15 eye and more here than has yet been publicly disclosed.

16 Second, Your Honor, there is the fact that the government
17 has conferred nationwide immunity on Arctic Glacier and on a
18 number of individuals related to Arctic Glacier. We believe
19 that any immunity -- if the conspiracy is limited to the
20 Eastern District of Michigan, then the immunity should be
21 limited to the Eastern District of Michigan. If the conspiracy
22 goes further, then we understand why the company has requested
23 and received transactional immunity for a broader geographic
24 scope, but we think logic suggests that, if you put all these
25 things together, you have substantial evidence that should

1 cause the Court to be concerned about this: the Plea Agreement
2 provisions, plus the lack of competition nationwide, plus the
3 fact that the defendant has already admitted that it has
4 allocated territory and fixed prices, which we think equals a
5 nationwide conspiracy.

6 Your Honor, we are concerned that the government should
7 ensure the disclosure to this Court of all relevant facts.
8 We've spoken to the government about that, and the government
9 has simply told us that they're aware of their duty and will
10 adhere to it, but they won't tell us what their view of their
11 duty is. So we, frankly, don't know whether the government
12 intends to disclose to the Court anything beyond the facts in
13 relation to this specific conspiracy described in the
14 Information and in the Plea Agreement.

15 We believe that level of disclosure is required by Section
16 3553 and by the Sentencing Guidelines, and as well as by
17 paragraph 11 of the Plea Agreement which specifically provides
18 for disclosure of all relevant facts.

19 There is the issue of Section 1B1.8 of the Guidelines, but
20 as I'm sure the Court knows from experience, Section 1B1.8 does
21 not make information provided under its protection and as part
22 of a cooperation agreement a secret. It simply means that that
23 information may not be used to establish the Guideline range,
24 but such information is routinely used to set the sentence
25 within the Guideline range. And now in light of *Booker* and the

1 fact that the Guidelines are not mandatory but are merely
2 advisory, we believe that 3553 requires that that information
3 be disclosed to the Court as relevant to the sentence that is
4 to be imposed.

5 Additionally, we are concerned that Mr. McNulty, the
6 whistleblower, has alleged that someone at Arctic Glacier has
7 attempted to intimidate him, which causes us concern about
8 potential suppression of the facts by Arctic Glacier, and we
9 believe should cause the government increased interest in
10 ensuring that there's full disclosure rather than disclosure
11 that merely is convenient for the company to make in this
12 proceeding while resisting any disclosure at all in the class
13 action pending in the Eastern District of Michigan.

14 Your Honor, the criminal case is the appropriate forum for
15 that disclosure. Normally one might say leave the civil case
16 to the civil case and keep the criminal case in the criminal
17 case and never the twain shall meet, except that in this case
18 the Plea Agreement specifically provides that the government
19 will not seek restitution because of the availability of a
20 civil remedy.

21 So, in a way, the government has now made what goes on in
22 the civil case material to the Court's decision in the criminal
23 case. And for that reason, we believe that the Court, in the
24 interest of the victims, should be concerned about ensuring
25 full disclosure.

1 As things presently stand, Arctic Glacier is using the
2 confidentiality of its conversations with the government as
3 both a sword and a shield. They're using it as a shield in
4 this proceeding to protect themselves under the Sentencing
5 Guidelines and to attempt to minimize their sentence. They're
6 using it a sword in the criminal -- or in the civil case where
7 they have now moved to dismiss the indictment on the grounds of
8 the *Twombly* case, arguing that the --

9 THE COURT: You say the indictment?

10 MR. AXELROD: I'm sorry. The Complaint. I apologize,
11 Your Honor.

12 They have moved to dismiss the civil Complaint under
13 *Twombly*, arguing that the class plaintiffs do not have -- have
14 not made sufficient allegations to cause the Court to go
15 forward.

16 So in this proceeding they've drawn a little box around the
17 facts that they hope to disclose, and in that proceeding then
18 they're saying the facts haven't become public and -- or the
19 facts aren't in the Complaint and, therefore, the Complaint
20 should be dismissed, all the while saying no restitution in the
21 criminal case because of the civil case which we've moved to
22 dismiss. Now, we don't think that's the way things should
23 proceed, and we hope the Court doesn't either.

24 Now, the kind of disclosure we're talking about could take
25 a variety of forms. There could be an allocution by the

1 defendant in this case or there could be cooperation in the
2 civil case. As I'm sure the Court has experienced in tax
3 cases, just to cite one example, it routinely is a condition of
4 probation that the defendant cooperate in the assessment and
5 collection of a tax that's due as a result of a criminal case,
6 and we believe that such a condition of probation would be
7 appropriate here.

8 We don't ask that the defendant confess judgment in a civil
9 case, not at all. But we do ask that the defendant not
10 stonewall discovery and that all of the facts be allowed to be
11 brought to light in the civil case if the defendant is not
12 going to allocute fully in this case. And, in fact, both
13 remedies may be appropriate, because there certainly would be
14 follow-up questions and other things to do in the civil case
15 after a basic allocution of the facts.

16 Now, Your Honor, we're also concerned about the scope of
17 immunity, as I mentioned earlier. If the conspiracy is limited
18 to the Eastern District of Michigan, then the immunity should
19 be too. That actually is what the Antitrust Division's grand
20 jury practice manual says. At Chapter 9, page 41, it says that
21 immunity should be limited to the places where the defendant
22 does business. In this case, again, as Your Honor has heard,
23 the immunity would be nationwide.

24 Now, I've spoken to Mr. Majoras about this, and we had some
25 disagreement about what is routine in these kinds of cases, and

1 it was his understanding that nationwide immunity is, in fact,
2 a standard provision. So what we did was we looked and we
3 found a couple of plea agreements, and these are just samples.
4 There certainly are more.

5 May I approach, Your Honor?

6 THE COURT: Show them to the courtroom deputy.

7 MR. AXELROD: I do have copies for everyone. May I,
8 Your Honor?

9 COURTROOM DEPUTY: Mr. Axelrod.

10 MR. AXELROD: Thank you (handing document).

11 THE COURT: There's a trap door in front there. You
12 don't want to step there.

13 MR. AXELROD: Thank you. My wife and daughter might
14 object if I stepped through it.

15 Referring to the Plea Agreement in United States against
16 Woodson Associates, paragraph 16 is the immunity provision, and
17 it actually is on page -- it's on page 12. And it specifically
18 limits the immunity to offenses occurring in connection with
19 offenses at the CCAFS, is what it's referred to there. It's
20 the Cape Canaveral Air Force Station. So this is an instance,
21 and again, there are many more of these. These are just the
22 ones that I brought. But this is an instance where the
23 immunity as provided in the Antitrust Division manual
24 appropriately is limited to the place where the conspiracy
25 occurred.

1 The other agreement, Your Honor, in United States against
2 Builder's Concrete, in paragraph 16, which begins on page 8,
3 the relevant language is on page 9, limits the immunity to the
4 Indianapolis, Indiana, metropolitan area because that is the
5 geographic locus of the conspiracy.

6 THE COURT: Which section is it that you're referring
7 to in the Builder's Concrete Plea Agreement?

8 MR. AXELROD: Your Honor, it's paragraph 16(a),
9 beginning on page 8 and ending on page 9. And the relevant
10 language is: "Upon the Court's acceptance of the guilty plea,
11 the United States will not bring criminal charges against any
12 current or former director, officer, or employee of the
13 defendant for any act or offense committed before the date of
14 this Plea Agreement and while that person was acting as a
15 director, officer, or employee of the defendant that was
16 undertaken in furtherance of an antitrust conspiracy involving
17 the manufacture and sale of ready mixed concrete," and here's
18 the relevant language, "in the Indianapolis, Indiana,
19 metropolitan area."

20 So we think that if the conspiracy was broader in this
21 case, then perhaps nationwide transactional immunity is
22 warranted, but that should be disclosed to the Court. If it
23 was narrower, then the immunity should be limited to the
24 location where the conspiracy occurred, especially in view of
25 the circumstantial evidence of a nationwide conspiracy that

1 I've already described, and especially in view of the
2 whistleblower Mr. McNulty's statement that the conspiracy goes
3 much further than the Eastern District of Michigan.

4 And, Your Honor, we also have, as I mentioned, concerns
5 about the defendant's ability to pay restitution and/or the
6 fines imposed. We discussed with the government and with Mr.
7 Majoras changing the fine provisions to shift the money from a
8 fine to some sort of a restitution fund that would be available
9 not only for the victims whom I represent, but for all of the
10 victims nationwide who might appropriately make claims in
11 connection with the conspiracy. Again, we believe the criminal
12 case is an appropriate forum for this to be considered because
13 it relegates restitution to the civil cases.

14 Now, Your Honor, one of the things that we may well wind up
15 requesting is that the Court impose a specific order
16 restraining the defendant's ability to transfer assets. I'll
17 explain in a moment that there's some evidence that that may
18 have been done. We don't know. I know only the bits and
19 pieces that we were able to get from their financial
20 statements. But I have a number of cases that show that under
21 the All Writs Act the Court has the authority, after the plea
22 but before the sentencing, to impose orders as appropriate to
23 preserve assets for the payment of restitution.

24 The reason for our -- reasons for our concerns arise from
25 Arctic Glacier's third quarter financials, which suggest that

1 the company is insolvent, if the definition of insolvency, an
2 inability to pay bills when due, is the definition that's used.
3 Regardless of the definition that's used, there's certainly
4 reason for a concern that they are very close to it. Their
5 financial statements disclose a working capital deficiency of
6 \$44 million as of the end of the third quarter, or September
7 30th, 2009. This results from \$60 million in notes coming due
8 in January. So they were shifted from long-term liabilities to
9 current liabilities, creating this working capital deficiency.

10 In the financials the company acknowledges that it cannot
11 predict whether it will be successful in refinancing those
12 debts. So there is grave reason for -- or reason for grave
13 concern that there simply would be no money left by the time
14 all of this is over, particularly if they pay the fine that's
15 provided for in the Plea Agreement, which Arctic Glacier
16 assigns a present value to in its financials as somewhere in
17 the neighborhood of \$6 million.

18 Additionally, as I mentioned, there is reason for
19 concern -- and I'm not accusing anybody of anything, because I
20 simply have seen what's in the financial statements, and it
21 caused the hair to stand up on the back of my neck and for me
22 to wonder what's happening. But the financial statements show
23 that in September 2009 \$28.1 million in cash was used to buy
24 down debt. Now, we can't tell from the financials if these
25 obligations were due or if they were prepaid, and we can't tell

1 from whom these obligations were purchased, whether they were
2 outsiders who simply held debentures or some other debt
3 instrument or whether they were insiders who had loaned money
4 to the company. So we can't tell any of those things. We see
5 only that \$28.1 million in cash was used to buy down debt. So
6 we are concerned about transfers of funds out of the company.

7 Then in addition -- and again, I'm not accusing anybody of
8 anything. I don't know what it was for. Simply my observation
9 that in the Plea Agreement it shows that in the third -- or I'm
10 sorry. In the financial statements it shows that in the third
11 quarter alone Arctic Glacier incurred legal fees and expenses
12 totaling \$900,000 in that quarter alone, to say nothing of the
13 \$10.2 million that I think they incurred in fees and expenses
14 the year before. Again, I'm not saying those are
15 inappropriate; I'm merely observing that they occurred and are
16 depleting the company's assets.

17 In light of all of that, Your Honor, the Plea Agreement's
18 fine provisions conflict with the Sentencing Guidelines and
19 with Title 18 because they may interfere with the ability to
20 make restitution. Section 8C3.3(a) of the Guidelines says that
21 the fine shall be reduced below that otherwise would be
22 required to the extent that imposition of such fine would
23 impair the defendant's ability to make restitution. So the
24 Guidelines provide that there should be no fine imposed that
25 will interfere with the ability to make restitution.

1 Additionally, there is 18 U.S.C. Section 3572(b), which
2 also specifically provides that there should be no fine that
3 interferes with the defendant's ability to make restitution,
4 which, again, is what we think threatens to happen in this
5 case.

6 So in conclusion, Your Honor, we believe that the Plea
7 Agreement serves the interests of the parties but not the
8 interests of the victims. We ask that the Court defer
9 consideration of the Plea Agreement until -- or defer
10 acceptance of the Plea Agreement until after all of the facts
11 are known. And finally, we just simply alert the Court and the
12 probation office that, in light of all these objections, it is,
13 I think, likely that unless we are able to persuade the parties
14 to revise it, the victims will object and ask that the Plea
15 Agreement be rejected.

16 THE COURT: Are you suggesting I can't accept a guilty
17 plea today?

18 MR. AXELROD: No, Your Honor, I'm not.

19 THE COURT: I didn't think you were.

20 MR. AXELROD: I'm not.

21 THE COURT: That's what I thought you were saying.

22 MR. AXELROD: No. I apologize if I conveyed that,
23 Your Honor. I'm simply asking --

24 THE COURT: Because, to me, what you're doing, you're
25 killing the goose that may lay your golden egg for you. But

1 that's between -- that's for future understanding.

2 MR. AXELROD: You know, and I do understand, Your
3 Honor. Again, I'm simply asking the Court defer final
4 acceptance of the Plea Agreement.

5 THE COURT: I wish you'd have just asked me that in
6 the beginning.

7 MR. AXELROD: I apologize, Your Honor.

8 THE COURT: No, you don't. I appreciate your saying
9 that, but you meant to say what you said or you wouldn't have
10 taken the time to do it.

11 MR. AXELROD: Well, I did mean to make my remarks,
12 Your Honor.

13 THE COURT: Well, I understand that. But really the
14 only thing that you want me to do is postpone the acceptance of
15 the Plea Agreement. You don't want me to postpone these
16 proceedings or acceptance of the guilty plea.

17 MR. AXELROD: That's absolutely correct, Your Honor.

18 THE COURT: I thought maybe that's what it was. And
19 you're getting me all confused, because I think you want me to
20 refuse the guilty plea, send them on their way to the grand
21 jury.

22 MR. AXELROD: Well, Your Honor, again, I meant my
23 remarks, but I guess I meant them to be clearer, because I did
24 not intend to convey that to the Court.

25 THE COURT: Well, that's what you've conveyed.

1 MR. AXELROD: Well, again, I do apologize for that. I
2 wanted to alert all of the parties, because I believe that the
3 probation office is going to go to work on this, and wanted
4 everyone, including the parties, to approach this with the
5 understanding that the victims have these objections.

6 THE COURT: Well, I understand the victims have the
7 concern.

8 MR. AXELROD: Yes, sir.

9 THE COURT: And I understand that they will look out
10 for their own best interests in this matter.

11 MR. AXELROD: Yes, sir.

12 THE COURT: And I understand you have rights under the
13 law to participate in this manner. I understand that.

14 MR. AXELROD: And we appreciate your indulgence in
15 allowing us to do so.

16 THE COURT: But I also trust that good judgment and
17 reason will permit you to have an overall view of the situation
18 so that you really can protect the interests of your clients.

19 MR. AXELROD: I will do my best, Your Honor, including
20 taking the Court's remarks to heart.

21 THE COURT: All right. Thank you.

22 MR. AXELROD: Thank you, Your Honor.

23 THE COURT: Mr. Culum, anything you want to say at
24 this time other than that you object?

25 MR. CULUM: Well, Your Honor, first off, you know, we

1 are -- I think that this -- Mr. Axelrod certainly addressed
2 several issues that they have raised, several of which they
3 raised to us when we met.

4 It addressed -- two issues. One, I think it would help all
5 parties involved to establish a procedure in which they address
6 their concerns to the probation office well in advance so that
7 we can all hear what they have to say.

8 Secondly, if they're going to file any written
9 objections, that there is a procedure in place, possibly 20
10 days in advance of the sentencing, so that parties could reply
11 or respond to the request. I think that would be worthwhile.

12 The second issue, I just want to make sure, and I know the
13 Court knows this, but we -- in the two weeks since we last were
14 here in Cincinnati, we likewise reached out to the direct
15 purchasers, the people who are prosecuting their case in the
16 Eastern District of Michigan, as well as indirect purchasers.
17 We offered to confer with them. Suffice it to say, they are
18 not here, and you can infer whatever you'd like from the fact
19 that the direct purchasers are not here.

20 THE COURT: Well, I thought that you represented, Mr.
21 Axelrod, a direct purchaser and some indirect purchasers. The
22 direct purchaser was not in the Eastern District of Michigan.

23 MR. AXELROD: That's correct, Your Honor.

24 THE COURT: But the others were -- some of those
25 indirect purchasers were in?

1 MR. AXELROD: That's correct, Your Honor.

2 THE COURT: Now, is that a different class action?

3 MR. CULUM: Your Honor, the lead counsel for the
4 direct purchasers, who represent -- lead counsel not only in
5 the charged conspiracy but throughout the country, is a person
6 by the name of Joe Kohn and his law firm, and I reached out to
7 them and just alerted them. They had read the Plea Agreement;
8 they were aware of the Plea Agreement; they were aware of the
9 proceedings today; they are not here. So it's possible that
10 The Baron Group may be an opt-out of the direct purchaser class
11 action, but the lead counsel was aware of the Plea Agreement,
12 aware of the proceedings here, and chose not to be here.

13 The second issue, we continually want to reaffirm we
14 appreciate the Court's listening to the victims, we still think
15 there are some standing issues in terms of the charged
16 conspiracy and the indirect purchasers and direct and proximate
17 harm.

18 So those are the two things as to what he just said, and I
19 may have something else today later, but thank you.

20 THE COURT: Mr. Majoras, do you wish me to proceed in
21 the matter, or what is your position at this time, for the
22 record?

23 MR. MAJORAS: Your Honor, our position is that we
24 should proceed. We certainly disagree with a number of things
25 that Mr. Axelrod said. We also are of the view that a number

1 of the arguments he's making are appropriate for the civil
2 action in which they represent these same parties. And just
3 for the record, we would renew the arguments we made the last
4 time we met that were on the record with respect to standing
5 and with respect to the appropriate place for restitution in
6 this case.

7 THE COURT: Mr. Axelrod, you were the proponent here.
8 Any further comment?

9 MR. AXELROD: Your Honor, I think I know when it's
10 time to sit down and be quiet.

11 THE COURT: You are very wise.

12 Mr. Adams, do you have anything you wish to add at this
13 time when I ask this question: Is it fair for me to believe
14 that this decision of yours and the corporation's to plead
15 guilty is your voluntary act and deed?

16 MR. ADAMS: Yes, it is, Your Honor.

17 THE COURT: And is it fair for me to believe that
18 you're pleading guilty here today on behalf of the corporation
19 with a full understanding of the nature of the charge against
20 you and the consequences of that plea of guilty?

21 MR. ADAMS: Yes, that is all understood.

22 THE COURT: The factual basis was set forth in the
23 Plea Agreement. Do you wish to elaborate on the factual basis
24 at this time?

25 MR. ADAMS: No. We'll certainly stand by what was set

1 out in the Plea Agreement.

2 THE COURT: And do you have any additions or
3 corrections or explanations you wish to make to that factual
4 statement?

5 MR. ADAMS: None, Your Honor.

6 THE COURT: And, Mr. Majoras, does your investigation
7 into the facts of this case establish the truth of the factual
8 rendition that I believe is set forth --

9 MR. MAJORAS: Paragraph 4, Your Honor.

10 THE COURT: What page is that on? I'll refer to
11 the --

12 MR. CULUM: Page 4, Your Honor.

13 MR. MAJORAS: Page 4.

14 THE COURT: I'm sorry. I didn't --

15 MR. MAJORAS: Page 4, Your Honor.

16 THE COURT: Page 4.

17 -- at page 4, and it continues on until page 6?

18 MR. MAJORAS: Yes, Your Honor, that is consistent.

19 THE COURT: And I incorporate that as to the factual
20 basis for the plea and the charge. And you say that your
21 investigation establishes the truth of that factual basis?

22 MR. MAJORAS: Yes, sir.

23 THE COURT: Mr. Adams, is the Statement of Facts true?

24 MR. ADAMS: It is true, Your Honor.

25 THE COURT: Is it fair, then, for me to believe that

1 you are pleading guilty here today on behalf of the corporation
2 because the corporation is indeed guilty of violating Title 15,
3 United States Code, Section 1, conspiracy to restrain trade?

4 MR. ADAMS: Yes, that's correct, Your Honor.

5 THE COURT: Do you have any questions at this time
6 that we can discuss, that you want to discuss?

7 MR. ADAMS: I don't, Your Honor.

8 THE COURT: Anything further the Court should do
9 before I make my findings in the matter?

10 MR. CULUM: No, Your Honor.

11 MR. MAJORAS: No, Your Honor.

12 THE COURT: Any questions? I've asked that several
13 times. I've only asked it one or two times with you because I
14 respect your professionalism, but many times I ask that many
15 times during the course of one of these proceedings.

16 MR. ADAMS: I have no questions, Your Honor.

17 THE COURT: Do you have a sentencing date available?

18 COURTROOM DEPUTY: Thursday, February the 11th, at
19 10:00 o'clock.

20 THE COURT: The Court finds that the -- the Court has
21 observed the appearance of Mr. Adams in giving his answers to
22 the questions asked on behalf of the corporation, and based on
23 such observations, the answers given, and Mr. Adams'
24 representations, the Court finds that the defendant, the
25 corporation -- or that he is in full possession of his

1 faculties. He is not suffering from any apparent physical or
2 mental illness. He is not under the influence of narcotics or
3 alcohol. He understands the proceedings in which he is
4 engaged. He understands the nature and meaning of the charge
5 and the consequences of the plea of guilty, and he is aware of
6 all plea negotiations undertaken on behalf of the corporation.
7 The Court is satisfied with Mr. Adams' responses as to how he
8 pled guilty on behalf of the corporation, and the Court finds
9 that the corporation is guilty of the offense as stated of the
10 violation of Title 15 of the United States Code, Section 1.

11 The matter will be referred to the department of probation
12 for a presentence investigation and report. The matter will be
13 continued until --

14 COURTROOM DEPUTY: Thursday, February the 11th, at
15 10:00 o'clock.

16 THE COURT: -- February the 11th at 10:00 o'clock,
17 which is a Thursday, at which time the Court will receive any
18 objections to any presentence report that is prepared.

19 The probation officer will provide the parties and Mr.
20 Axelrod the timeline for the investigation today, and the
21 parties are requested and advised to abide by that timeline so
22 that we can meet the obligation of the sentencing information
23 and the obligations presented to us under Title 18, Section
24 3553, so that at the time of sentencing an appropriate sentence
25 can be provided that is sufficient but not greater than

1 necessary to satisfy the sentencing requirement of Congress in
2 that section.

3 Mr. Adams, I won't require you to post a bond.

4 MR. ADAMS: Thank you, Your Honor.

5 THE COURT: I never did that before on a corporation,
6 but I thought about it and, no, I won't do that.

7 Mr. Culum, is there anything further the Court should do at
8 this time to -- I continue the approval of the Plea Agreement
9 until such time as the sentencing date, at which time I'll have
10 the complete information so that I can evaluate the matters
11 that have been indicated today, and I will make the judgment at
12 that time as to whether to accept the Plea Agreement or not. I
13 do not represent to anyone that I have in any way, and I do not
14 intend to in any way indicate any decision that I might make as
15 to whether I would accept it or not. Understand that I will
16 inform the parties before that date so that, if my thought is
17 that I will not accept it, that the plea can be withdrawn to
18 protect the defendant.

19 However, I believe that a hearing will be necessary on the
20 objections to the presentence report before a fair
21 determination can be made and before the defendant is denied
22 the benefit of its bargain, or the United States the benefit of
23 its bargain.

24 Mr. Culum?

25 MR. CULUM: Your Honor, to ensure that we receive the

1 benefit of our bargain, is there a way that we could establish
2 a process, maybe that any written objections or written
3 pleadings relating to the sentencing be filed in advance so
4 that all parties can respond to --

5 THE COURT: Have you read the local rule?

6 MR. CULUM: Your Honor, I have, but I have not before
7 today. I mean, I have, but I didn't focus on it before this
8 meeting. I will review the local rules.

9 THE COURT: As I recall, the probation officer will
10 present you a timeline, and the objections to the presentence
11 report are made at least 30 days.

12 The probation officer is here. Would you explain the
13 timeline while I'm here so that we all understand it.

14 PROBATION OFFICER JENSEN: Yes, Your Honor.

15 Laura Jensen for the probation office. 35 days from today
16 the parties, the government and counsel for the corporation,
17 will receive an initial version of the presentence report for
18 review. 47 days from today they must have their objections to
19 the presentence report to the probation office.

20 Normally the victim is not provided a copy of the
21 presentence report.

22 And then 73 days from this date it will be due to the Court
23 in a final version with any addendum, discussing the objections
24 to the presentence report and the positions of all parties
25 included.

1 THE COURT: And what about giving the presentence
2 report to the victim, to Mr. Axelrod?

3 MR. CULUM: Your Honor, I would hope that that
4 presentence report is in a redacted version, because certain
5 portions of it should not be disclosed to him.

6 THE COURT: Absolutely.

7 MR. CULUM: Okay. And in that vein, I envision that
8 prior to sentencing that there will be written, a written
9 pleading from the victims. And to ensure that we don't -- are
10 in a situation where we need to recess because we will have
11 received the pleading on the day of the sentencing or shortly
12 before, I know that I would appreciate the opportunity to
13 consider the arguments made so that, if there is an appropriate
14 response, that I'm able to do so. And that's what --

15 Apart from the PSR, I think that there will be a written
16 plea much like that there was before the initiation of this
17 arraignment, and I would ask the Court to suggest to the
18 victims or to Arctic or to the government that, if there are
19 going to be written pleadings apart from the PSR, that they
20 would be submitted to the Court in advance, well in advance, so
21 that all parties could respond.

22 Maybe I'm out of line, but I just -- I thought that would
23 be helpful.

24 THE COURT: Mr. Axelrod, what I'm concerned about, I
25 will not see the report until after it has been completely gone

1 through the process and is in a final form with your objections
2 to the report, I presume. But I don't know exactly how to
3 approach this in view of the fact that the victims haven't had
4 a chance to present their petition to the probation department
5 at this time. When will you present your petition to the
6 probation department?

7 MR. AXELROD: Your Honor, you kind of have me on the
8 spot about that. But if it's all right with Mr. Culum, and
9 with the Court's approval, I think if he and I talk after this
10 proceeding, it won't be difficult at all to come up with a
11 schedule that will meet his needs to be able to respond to
12 whatever it is we submit. I'm happy to do that.

13 THE COURT: But you understand that you're going to
14 have -- you're notified that this situation is going to be
15 tried or at least determined on February the 11th and that it's
16 necessary that the objections and your petition for -- or
17 whatever your request, I guess would be a way to put it, for
18 restitution would be available to them so that the probation
19 department can review it and add it to the presentence report?

20 MR. AXELROD: I understand, Your Honor. We're bound
21 by the same timeline as everyone else, and I was suggesting
22 that I may be able to work out something extra with Mr. Culum.

23 THE COURT: Well, I appreciate that. And if there are
24 other complications, why, we'll set a hearing.

25 MR. AXELROD: Thank you, Your Honor.

1 THE COURT: Mr. Majoras?

2 MR. MAJORAS: Thank you, Your Honor. I made these
3 comments on the record at our last opportunity, and we'll just
4 state them briefly.

5 The company is very interested, because of various
6 financial constraints that it is facing, in trying to establish
7 a certainty with respect to the sentencing here. We understand
8 the Court's schedule. We will certainly abide by that. We
9 will provide the information on a timely basis.

10 Following up with what Mr. Culum said, all I would ask, so
11 that I don't have to come to the Court seeking any additional
12 time, is that if the plaintiffs -- I'm sorry, if the victims'
13 group were to decide to file some court pleading aside from the
14 objection or anything else in the presentencing stage, that
15 that be done at least 20 days in advance of the hearing so that
16 we have adequate time to respond if we need to.

17 MR. AXELROD: And, Your Honor, I'm happy to do that.

18 THE COURT: All right. So that will be added to the
19 situation.

20 Now, how will the victim be notified of the -- well, the 20
21 days, then, is figured from February the 11th. Is that what
22 you're talking?

23 MR. MAJORAS: That would be my suggestion, Your Honor.

24 MR. AXELROD: Yes, sir.

25 THE COURT: All right. And that would be what date,

1 so that I don't have to keep figuring that?

2 COURTROOM DEPUTY: January 22nd.

3 THE COURT: So January 22nd any comments from the
4 victims represented here today will be given to the parties.

5 MR. AXELROD: Yes, sir.

6 MR. CULUM: Thank you, Your Honor.

7 MR. MAJORAS: Thank you, Your Honor.

8 THE COURT: Now, we have the problem of notice that's
9 pending before the Court, the request of the United States of
10 the notice. And I think we're here; let's discuss that at this
11 particular time.

12 MR. CULUM: Your Honor, there are a significant number
13 of direct purchasers who are located in the Eastern District of
14 Michigan who are affected by the charged conspiracy, many of
15 whom are represented by Mr. Kohn. Mr. Kohn has received the
16 Information, the Plea Agreement, et cetera. Certainly he
17 has -- he has an independent reason to try to reach out to
18 those people, but he may not be successful.

19 We felt that the use of an ad, the notice through our
20 filing, will provide these individuals, these businesses, the
21 opportunity to know of and be aware of the court proceedings in
22 this case. It certainly has worked out well in the Home City
23 situation. We certainly crafted it after the Home City notice.

24 We have been criticized that it took a little bit of time
25 to get it up and running, and that is our fault. We tried to

1 do it as quickly as we could, but unfortunately, we didn't
2 do -- with things going on, we couldn't do anything until it
3 was unsealed. But we would believe -- we believe that that
4 notice is sufficient. We believe it was sufficient in the Home
5 City situation.

6 We have been in contact with the direct purchasers. The
7 indirect purchasers, Mr. Wild -- who is not here, but Mr.
8 Axelrod is co-counsel -- he is aware of the notice, and I
9 believe that, as best as we can do with the number and multiple
10 numbers of victims we have here, we're doing the best job we
11 can of notifying them of court proceedings, appearances,
12 changes in the case status.

13 So we would ask the Court to sign the order and allow us to
14 provide notice via the Detroit Free Press.

15 THE COURT: Any comment on that, Mr. Majoras?

16 MR. MAJORAS: Essentially I'm not sure this is my
17 fight, Your Honor, but I would agree that there has been a
18 great deal of publicity both from the standpoint of the
19 announcements made by the DOJ, the announcements made by my
20 client as a part of their corporate disclosures. The fact that
21 there are a number of counsel, only two of whom were mentioned
22 today, in the civil actions who have an interest in looking
23 after their what they hope will be classes in those cases, and
24 so we would not object to what Mr. Culum has suggested.

25 THE COURT: Have these lawsuits been filed? Have

1 you -- are the lawyers identified?

2 MR. MAJORAS: Yes, sir.

3 THE COURT: And are they all filed in the Eastern
4 District of Michigan?

5 MR. MAJORAS: There is one that is filed in Wisconsin,
6 Your Honor, but the -- in fact, the MDL court in the Eastern
7 District of Michigan has identified at least lead counsel prior
8 to class certification, including Mr. Wild and Mr. Kohn, who
9 Mr. Culum mentioned.

10 THE COURT: Is that database available to the United
11 States or the defendant to use as a tool to give notice to
12 those particular individuals, the lawsuits?

13 MR. CULUM: Your Honor, the Web site that we're using
14 is our own, and it deals with the charged conspiracy. My
15 understanding is that the allegations in the Eastern District
16 of Michigan that are the subject of the Complaint are broader
17 than the charged conspiracy here. So to the extent that there
18 is an alleged victim of the Complaint who lives in Kansas, for
19 example, that person probably could -- I mean, our notice is
20 not that sufficient for him, but that person is not a victim
21 under our -- under the statute we're here.

22 So the defendant cannot use the Web site, but we will
23 continue to provide updated information as to the court
24 proceedings in this case, and everyone -- anyone in the country
25 can look at it.

1 In terms of providing information, we're the only people
2 putting it up, but you can go Google it and find it yourself,
3 and everyone has access to it. It's not a very --

4 THE COURT: What about Facebook?

5 MR. CULUM: I will raise that with Ms. Varney.

6 MR. MAJORAS: Your Honor, if I could, so I make sure I
7 wasn't misunderstood, there is no Web site as such or a
8 notification process in the Eastern District of Michigan.
9 There have been no classes certified. As Mr. Culum said and as
10 we raised in our discussion about the representation of the
11 victims, there is an issue where the class, purported classes
12 far exceed the area of conduct in terms of the Information
13 charged.

14 So that there is not a process other than simply the PACER
15 filings in that case, which I don't think would be an
16 appropriate venue.

17 THE COURT: Mr. --

18 MR. AXELROD: And, Your Honor, frankly, I am not -- I
19 don't know the answer to this, but I simply point out that as I
20 said in my remarks, under 1B1.3, if there is a broader
21 conspiracy -- and I don't know what has been disclosed to the
22 government. But if indeed there is a broader conspiracy than
23 the Eastern District of Michigan, because it's part of the same
24 course of conduct, it would be deemed relevant conduct under
25 the Guidelines. I don't know whether that creates a notice

1 obligation beyond the Eastern District of Michigan, but I
2 simply point out that that possibility exists.

3 THE COURT: Mr. Culum, in other words, we're following
4 this procedure from the Home City case; is that correct?

5 MR. CULUM: Correct, Your Honor.

6 THE COURT: And it's the same procedure as far as the
7 notice is concerned. And, of course, I do not know whether
8 that's been effective yet because we keep postponing the Home
9 City case.

10 MR. CULUM: Correct, Your Honor. And it's been used
11 in other antitrust cases, and generally I believe most judges
12 have been pretty happy with the system.

13 THE COURT: All right. And so you're going to
14 duplicate what we've done in Home City?

15 MR. CULUM: Absolutely.

16 THE COURT: All right.

17 Well, in the interest of moving the case forward, I would
18 agree that you may proceed with the same order that I issued in
19 the Home City case to notify the general public and anyone
20 interested in this particular case.

21 MR. CULUM: Thank you, Your Honor.

22 THE COURT: Is there anything else that's -- and the
23 motion that was filed, I believe, on behalf of Mr. Axelrod's
24 client, I believe that has been granted, in part anyway, and is
25 now terminated on my docket?

1 MR. AXELROD: I'm sorry.

2 THE COURT: Is that right?

3 MR. AXELROD: I didn't realize. I thought the Court
4 was telling me something rather than asking me something.

5 THE COURT: No. I was trying to get a rise out of you
6 to see whether it's been -- whether I've answered your motion
7 or not.

8 MR. AXELROD: You've got a rise out of me, Your Honor,
9 and, yes, you have.

10 THE COURT: All right. So then all motions are
11 straightened out at this time. I await with bated breath the
12 next round.

13 Is there anything further at this time? As I said, I've
14 accepted the guilty plea, and the matter will be continued till
15 February the 11th at 10:00 o'clock.

16 MR. CULUM: Your Honor, thank you for letting us be
17 here today. It's a beautiful courtroom. I don't know that
18 we're worthy of it, but thank you. It's really an honor.

19 THE COURT: Well, I know. I feel most humble in that
20 I'm just glad to be back in it. You can see the environment is
21 a little different than we've been operating in in the past
22 meetings with you. But I've tried cases in a cornfield, so
23 this is not -- I mean, the trappings are beautiful, but I can
24 try a case almost anyplace that I can hear.

25 Is there anything further, then, from the defense at this

1 time?

2 MR. MAJORAS: Nothing further, Your Honor. We thank
3 you for the Court's consideration.

4 THE COURT: Mr. Axelrod, anything?

5 MR. AXELROD: Nothing further, Your Honor.

6 THE COURT: So be it. The matter is continued until
7 February the 11th at 10:00 o'clock. 2010. Unbelievable.
8 Thank you.

9 MR. MAJORAS: Thank you, Your Honor.

10 COURTROOM DEPUTY: All rise. This honorable court is
11 now adjourned.

12 (Proceedings concluded at 11:50 AM.)

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C E R T I F I C A T E

I, Luke T. Lavin, RDR, CRR, the undersigned, certify
that the foregoing is a correct transcript from the record of
proceedings in the above-entitled matter.

s/Luke T. Lavin
Luke T. Lavin, RDR, CRR
Official Court Reporter

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